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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

RICHARD J. BASMAJIAN,

Plaintiff and Appellant,

v.

CARLA ADELMANN,

Defendant and Respondent.

B289260

(Los Angeles County
Super. Ct. No. LP006178)

APPEAL from an order of the Superior Court of
Los Angeles County, Barbara R. Johnson and Lesley C. Green,
Judges. Affirmed.

Richard J. Basmajian, in pro. per., for Plaintiff and
Appellant.

Beltran, Beltran, Smith and Patrick S. Smith for
Defendant and Respondent.

Appellant Richard Basmajian (Basmajian) and respondent Carla Adelman (Adelman) are brother and sister. Their father died in 1997, leaving an estate consisting of two pieces of real property, a promissory note, and various bank and brokerage accounts. The present appeal—the sixth between the parties—is from an order approving successor trustee Maya Rubin’s third and final account (current account).

Basmajian challenges the order approving the current account on a number of grounds, including that it omitted some cash distributions to the beneficiaries, incorrectly valued the distribution of real property to Adelman, and failed to equalize distributions between the siblings. We conclude that several of the issues Basmajian raises pertain to earlier accountings that have long since become final, and the remaining issues were not properly preserved in the probate court. Accordingly, we affirm the probate court’s order in its entirety.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Prior Proceedings

A. First Four Appeals

The following background facts are drawn from our earlier five opinions in this case. Basmajian, an attorney, and his sister, Adelman, are the primary beneficiaries of a trust created in 1985 by their father, John Basmajian (decedent). At decedent’s death, his assets were worth approximately \$1.4 million and consisted of the house where Adelman lived, an apartment building (the Hesby property), mutual funds, bank accounts, and a promissory note executed by Basmajian in the sum of \$250,000. The trust provided that after gifts to decedent’s two ex-wives, Adelman was to receive the house, and Basmajian and

Adelmann were to divide the remainder of the trust assets equally. The siblings were to be cotrustees.

With respect to the promissory note, decedent had loaned \$250,000 to Basmajian, and Basmajian had executed a promissory note that provided for a five percent annual rate of interest beginning November 1, 1995. Basmajian used the money to purchase an interest in a banquet hall. He made no payments on the note during decedent's life.

On December 1, 1997, decedent executed an amendment to the trust that made Basmajian the sole trustee. Decedent died two weeks later. After decedent's death, Basmajian, as sole trustee, forgave himself the \$250,000 loan.

Between 1998 and 2000, Adelmann filed petitions and requests seeking, among other things, to declare the trust amendment void based on undue influence, to have Basmajian removed as trustee, and to compel an accounting. Among the issues Adelmann raised in those filings was her concern that Basmajian either omitted the \$250,000 promissory note from the list of trust assets or recharacterized the note as a gift.

In May 2000, the probate court submitted a number of issues to a referee, including whether the \$250,000 was a loan or a gift to Basmajian. The referee found the \$250,000 was a loan, and thus the promissory note was an asset of the trust. The probate court adopted the referee's findings.

Basmajian appealed from that ruling, contending that the referee lacked authority to consider the characterization of the note. In our first opinion (case No. B146995), filed in July 2002, we affirmed the findings of the referee.

While the first appeal was pending, the probate court tried the question of whether the trust amendment was procured by

undue influence. In December 2001, six months before we filed our first opinion, the probate court ruled that the amendment was the product of undue influence exerted on the decedent by Basmajian, and therefore was null and void. Basmajian filed a second appeal.

The probate court removed Basmajian as trustee in March 2002 and appointed Harriet Rechtman as successor trustee. In June 2003, we filed an opinion in the second appeal (case No. B156908) affirming the probate court's ruling that the trust amendment was the product of undue influence.

In our third opinion (case No. B191507), filed in October 2007, we reversed the probate court's finding that Basmajian's two prior appeals were contests in violation of the trust's no-contest clause. In our fourth opinion (case No. B251475), filed in May 2015, we affirmed an order of the probate court denying Adelman's request to recover attorney fees.

B. Transfer of the Hesby Property; the Fifth Appeal

In December 2009, the probate court entered an order granting the trustee authority to transfer the Hesby property to either Basmajian or Adelman after a bidding process to which the parties stipulated. Adelman made the highest bid, and the probate court awarded her the right to purchase the Hesby property for \$1,510,000. Thereafter, Adelman made a cash payment to the trustee of half the purchase price (\$755,000), and the trustee transferred the Hesby property to Adelman.

In our fifth and most recent opinion (case No. B287883), we affirmed the probate court's order granting judgment on the pleadings on Basmajian's petition to compel Adelman to transfer the Hesby property to him.

C. Appointment of Successor Trustee; Additional Accountings

Maya Rubin replaced Rechtman as successor trustee in April 2010. The probate court approved Rechtman's second and final account in May 2011.

Rubin filed her first account in August 2011, which the court approved in December 2011. Rubin filed her second account in August 2013, which the court approved in January 2014.

II.

Current Account

Rubin filed the current account on February 25, 2016. Both Adelmann and Basmajian filed written objections.

In her objections to the current account, Adelmann urged that the trustee (1) overvalued the one-half interest in the Hesby property transferred to Adelmann under the terms of the trust, and (2) erred by making a distribution to Basmajian of \$44,970, ostensibly to repay Basmajian for money he advanced to the trust sometime prior to 2000.

In his objections to the current account, Basmajian urged that the trustee (1) failed to account for distributions of apartment building net income that the Hesby property manager paid directly to Adelmann and Basmajian from December 14, 1998, until the building was deeded to Adelmann in 2010, (2) failed to account for a 2009 distribution to Adelmann of \$16,875, and (3) failed to make a "determination of non pro rata distributions of principal and income and corresponding adjustments made to each residuary beneficiary's respective 'income account' and 'principal asset account' pursuant to [Probate Code] section 16341."

On July 12, 2017, the probate court (Judge Green) conducted a full-day hearing on the objections to the current account. At the hearing's conclusion, the court sustained Adelman's objections and overruled Basmajian's.¹ Subsequently, on February 16, 2018, the court (Judge Johnson) entered an order settling the third account and discharging the trustee.

Notice of entry of the order was served on February 22, 2018. Basmajian timely appealed.

DISCUSSION

Basmajian challenges the probate court's order on five separate grounds. He contends: (1) the current account should have included distributions made by the apartment manager outside the trust; (2) he was entitled to be reimbursed for a \$18,054 loan he made to the trust, plus interest; (3) the current account failed to equalize distributions between Basmajian and Adelman, as required by Probate Code² section 16341; (4) the Hesby property should have been valued at \$1,510,000 for purposes of calculating the value of its transfer to Adelman; and (5) the current account should have included a \$16,875 distribution to Adelman in 2009.

As we discuss, several of these issues address alleged errors attributable to earlier accounts that have long since become final. Those issues, thus, are not properly before us. The remaining issues were not properly preserved in the probate court and

¹ The court's findings with regard to each of the objections are discussed in greater detail, *post*.

² All subsequent statutory references are to the Probate Code.

therefore have been forfeited. Accordingly, we will affirm the probate court's order in its entirety.

I.

Legal Principles and Standard of Review

A trustee or beneficiary may petition the probate court with regard to matters concerning the internal affairs of the trust, including “[s]ettling the accounts and passing upon the acts of the trustee” and “determining to whom property shall pass or be delivered upon final or partial termination of the trust.”

(§ 17200, subds. (a), (b)(4), (5).) When presented with a section 17200 petition to settle an account, “ ‘the probate court has a duty imposed by law to inquire into the prudence of the trustee’s administration’ ” and “ ‘to decide all incidental issues necessary to carry out its express powers to supervise the administration of the trust.’ ” (*Schwartz v. Labow* (2008) 164 Cal.App.4th 417, 427, italics omitted; *Estate of Moore* (2015) 240 Cal.App.4th 1101, 1111; see also *Estate of Fain* (1999) 75 Cal.App.4th 973, 991 [“It is the [probate] court’s duty to scrutinize accounts and determine all issues raised by a petition to approve any account”].)

An order determining the existence of a power, duty, or right under a trust is appealable. (*Gridley v. Gridley* (2008) 166 Cal.App.4th 1562, 1587; *Esslinger v. Cummins* (2006) 144 Cal.App.4th 517, 523.) On appeal, we review the probate court’s factual findings following a hearing on a contested accounting for substantial evidence (*Estate of Fain, supra*, 75 Cal.App.4th at p. 991), and its exercise of its equitable powers for an abuse of discretion (*Wilkin v. Nelson* (2020) 45 Cal.App.5th 802, 809).

II.

Three of Basmajian’s Appellate Contentions Are Precluded by Earlier Probate Court Orders

A. Legal Principles

1. Finality of Probate Court Orders

The administration of a decedent’s estate involves a series of separate proceedings, each of which is intended to be final. (*Meyer v. Meyer* (2008) 162 Cal.App.4th 983, 992 (*Meyer*); *Estate of Davis* (1990) 219 Cal.App.3d 663, 668; *Estate of Callnon* (1969) 70 Cal.2d 150, 156.) Each such final order is immediately appealable. (See Code Civ. Proc., § 904.1, subd. (a)(10) [providing for the appealability of “an order” made otherwise “appealable by the Probate Code”]; see also Ross, Cal. Practice Guide: Probate (The Rutter Group 2019) ¶ 3:3 (Rutter Probate Treatise) [probate “is a continuous proceeding” which “involves a series of stages, each of which may result in an appealable order or judgment”].) Thus, unlike civil appeals, which generally are governed by the “one final judgment” rule (*Wilson v. County of San Joaquin* (2019) 38 Cal.App.5th 1, 7), appeals may be taken under the Probate Code from a variety of orders issued during the administration of a probate estate.

Once final, probate orders are conclusive as to the matters before the probate court. Any error in the order therefore “‘must be attacked by appeal and not collaterally. [Citations.] If not corrected by appeal an “erroneous decree . . . is as conclusive as a decree that contains no error.” [Citations.]’” (*Meyer, supra*, 162 Cal.App.4th at p. 992; see also *In re Estate of Loring* (1946) 29 Cal.2d 423, 432 [“It is settled . . . that, once final, an erroneous decree of distribution, like any other erroneous judgment, is as conclusive as a decree that contains no error.”].)

2. Orders Approving Accountings

An order settling a trustee's account is a final, appealable order, which is conclusive as to all matters before the court. "In this respect there is no difference between a final account—that is, one made with a view to the immediate termination of the trust—and an intermediate account." (*Lazzarone v. Bank of America* (1986) 181 Cal.App.3d 581, 591–592 (*Lazzarone*)). Any alleged errors apparent on the face of the account thus must be promptly raised; if not raised, such an error may not be raised in a subsequent proceeding. (*Meyer, supra*, 162 Cal.App.4th at p. 992.)

The court addressed the preclusive effect of a previously approved account in *Estate of Welch* (1957) 152 Cal.App.2d 225 (*Welch*). There, Bank of America, as special administrator, filed a first account that, among other things, noted a \$599 disbursement for the decedent's funeral expenses. The executor objected to the account on the grounds that certain personal property had not been itemized, but he raised no issues concerning the amount paid for the funeral. The probate court entered an order approving the account. (*Id.* at pp. 226-227.) Nine months later, the bank filed a petition for fees; the executor objected to the fee request on the grounds that the funeral expenses were excessive and the bank had failed to account for some of the decedent's personal property. The probate court concluded that these issues had been adjudicated by the order approving the first account, and it thus declined to consider them. (*Id.* at p. 227.)

The executor appealed, urging that the order approving the first account was not res judicata as to his objections to the petition for fees. The appellate court disagreed and affirmed. It

explained that an order settling an account “ ‘binds those interested in the estate to the propriety as well as to the occurrence of the receipts and disbursements listed.’ ” (*Welch, supra*, 152 Cal.App.2d at pp. 228–229, quoting *Estate of Roberts* (1945) 27 Cal.2d 70, 78.) Thus, because both the personal property and funeral expenses had been set out in the first account, the order approving the first account precluded the executor’s current claims—both with regard to the items of personal property, which were expressly addressed in the order, and the funeral expenses, which were not. (*Welch*, at p. 229.)

The court similarly concluded in *Lazzarone, supra*, 181 Cal.App.3d 581. There, the bank, as trustee, filed annual accountings between 1972 and 1980. The accountings showed the trust’s funds were invested in part in the Bank’s common trust funds, which suffered capital losses in all but one year. After the bank was discharged as trustee, the beneficiary brought an action against the bank, alleging that the bank negligently and/or fraudulently invested the funds. (*Id.* at pp. 587–588.) The probate court sustained the bank’s demurrer without leave to amend, and the beneficiary appealed. (*Id.* at p. 589.)

The Court of Appeal affirmed the order sustaining the demurrer. It explained: “[P]laintiff is alleging negligence and fraud on the part of the trustee. [The] Bank’s accountings disclosed that its investments in its common trust funds had suffered losses. . . . [T]he probate court, in the exercise of its duty to scrutinize Bank’s management of the trust with care [citations omitted], necessarily determined that Bank had carefully and prudently managed the trust. *This determination, in turn, necessarily encompassed a rejection of any claims that the trustee had defrauded plaintiff, a beneficiary.*” (*Lazzarone, supra*,

181 Cal.App.3d at p. 594, italics added.) That determination was res judicata and thus could not be raised in the appeal then before the court. (*Ibid.*; see also *In re Estate of Loring, supra*, 29 Cal.2d 423 [decree of final distribution of testamentary trust was conclusive of issues that could have been earlier raised, even if they were not actually raised].)

With these principles in mind, we turn to Basmajian's appellate claims.

B. Distributions Made by the Apartment Manager Outside the Trust

Until the Hesby property was distributed to Adelman in 2010, the apartment manager allegedly distributed rental proceeds directly to Basmajian and Adelman. Trustee Rechtman noted these distributions in her second account, filed September 21, 2010, as follows: "Both Carla Adelman and Richard Basmajian received one half each of the net monthly proceeds from the rental of the Hesby Street property each month. Such payments were made directly from the property manager to Carla and Richard, with a statement[] sent to [the trustee] so she could review the expenses, income, and net proceeds on a monthly basis. Those payments are not reflected in this accounting because [the trustee] did not make such payments and the money was paid directly from the property manager to the beneficiaries with the consent and knowledge of

both beneficiaries.” The probate court approved Rechtman’s second account on May 6, 2011.³

Trustee Rubin did not itemize any direct payments from the property manager to Adelman and Basmajian in the current account. Basmajian objected, asserting that the trustee “failed to list, and take into account, all of the trust distributions, including, but not limited to . . . all distributions of apartment building net income which the property manager paid directly to the beneficiaries from December 14, 1998 until the building was deeded to Adelman in 2010.”

The trial court overruled Basmajian’s objection, concluding that the distributions to which Basmajian objected were not part of the accounting before the court. The court said: “[T]he accounting we’re trying here is Ms. Rubin’s accounting . . . for the period indicated So if there was something done by a prior . . . trustee, that’s not before me today.”

On appeal, Basmajian contends the probate court erred in approving the current account because it did not include the direct payments from the property manager to Adelman and Basmajian. He urges: “Without knowing the full extent of what money was actually distributed outside of the trust to each beneficiary (and over what years), a proper allocation of distributions cannot be achieved, nor can the application of Probate Code section 16341 . . . be accurately made.”

Basmajian’s claim is without merit. The probate court’s order approving Rechtman’s second account was conclusive as to all matters disclosed in that account, including that the

³ In doing so, the court overruled Basmajian’s objections, which are not part of our appellate record, “in their entirety.”

payments made by the apartment manager directly to Adelmann and Basmajian would not be specifically accounted for because Rechtman “did not make such payments and the money was paid directly from the property manager to the beneficiaries with the consent and knowledge of both beneficiaries.” If Basmajian was concerned either that the apartment income had not been equally distributed or that Rechtman had failed to specifically account for the apartment income, he had the opportunity to raise the issue prior to the court’s approval of Rechtman’s second account. Having failed to do so, he is precluded by the court’s earlier order approving that account from raising the issue now. (See *Welch*, *supra*, 152 Cal.App.2d at p. 228; *Lazzarone*, *supra*, 181 Cal.App.3d at p. 594.)

Estate of Schneider (1979) 95 Cal.App.3d 55, on which Basmajian relies, does not compel a different conclusion. There, as here, a trustee’s annual accounts did not include the income and expenses attributable to an apartment building owned by the trust; that information was provided to the beneficiaries only by the apartment manager. Unlike in the present case, however, the trustee’s accounts did not note the omission. (*Id.* at pp. 57–58.) Under those circumstances, the Court of Appeal said, the probate court’s orders approving the prior accounts did not preclude the beneficiaries from challenging the prior accounts. It explained: “Where a trustee who has knowledge of income fails to account for that income there is nothing to which the jurisdiction of the probate court can attach, and the finality of an order can only attach to the disclosed accounting and rendered report of the trustee *not* to undisclosed matters.” (*Id.* at p. 58.) Because in the case before it the trustee had not fully accounted

for all of the trust's income and assets, "the special decree of finality is not here applicable." (*Id.* at p. 58.)

The present case is distinguishable from *Estate of Schneider*. There, the trustee did not note the omitted information in its accounts, and thus the court's order approving those accounts did not implicitly or explicitly approve them. Here, in contrast, trustee Rechtman addressed the direct payments from the apartment manager to the beneficiaries in her second account, and thus the probate court's order approving that account necessarily approved Rechtman's accounting of the payments. As such, the order approving Rechtman's second account is res judicata as to Basmajian's claims that the distributions made outside the trust were not properly accounted for.

C. Basmajian's Advance to the Trust of \$18,054

Sometime prior to 2000, while Basmajian was acting as trustee, he advanced \$18,054 to the trust. That advance apparently was reflected in Basmajian's first account, to which Adelman filed objections. The probate court submitted that issue and others arising out of Basmajian's first account to Commissioner Ann Stodden in 2000.

Commissioner Stodden held a hearing on Adelman's objections to Basmajian's first account on June 16, 2000. At the conclusion of the hearing, Commissioner Stodden made a number of findings, including that Basmajian was entitled to be reimbursed for the \$18,054 advanced on behalf of the trust, and she ordered Basmajian to submit "a revised Petition for Settlement of Account and Reimbursement of Costs Advanced"

within 60 days. On October 27, 2000, the probate court adopted the commissioner's findings.⁴

The appellate record does not reflect that Basmajian ever submitted a revised accounting to the probate court or that the probate court ever approved a revised first account. Instead, Basmajian raised the issue of his right to reimbursement approximately 10 years later, in April 2010, apparently in connection with an accounting prepared by successor trustee Rechtman. The probate court (Judge Steele) determined Basmajian was entitled to be reimbursed for the \$18,054 advance, but that payment would not be made until "[Basmajian's] second account is approved and the dollars are available for distribution." Further, the court reserved the issues of Basmajian's right to interest on the \$18,054 advance and Adelman's right to a set-off. The minute order of the April 20, 2010 hearing states: "The Court approves reimbursement of \$18,054 to Mr. Richard Basmajian without interest. Said reimbursement shall only be paid if the Second account of Mr. Richard Basmajian is filed and approved by the court; reimbursement is also subject to possible set-offs."

It is not clear whether Basmajian ever submitted a second account to the probate court, but it is undisputed that the probate court never approved any such account or determined that Basmajian was entitled to interest on the \$18,054 advance. Nonetheless, Basmajian represented to trustee Rubin that there

⁴ Basmajian appealed the court's order on the ground that Commissioner Stodden lacked authority to consider some of the issues submitted to her. We affirmed the order adopting the commissioner's recommendations.

was a court order entitling him to \$18,054 plus interest, and in September 2015, Rubin disbursed \$44,970 (\$18,054 plus accrued interest) to Basmajian. Rubin included the disbursement in the present account, and Adelman filed an objection.

At the July 12, 2017 hearing, Adelman's counsel argued that Basmajian's right to reimbursement was subject to a condition precedent—namely, the filing and approval of Basmajian's second account—that had never been satisfied. Thus, counsel said, because the condition precedent had not been met, Basmajian was not entitled to payment. Basmajian disagreed; he conceded the court had never approved his second account, but he argued he nonetheless was entitled to payment because the set-off issues had been resolved.

The court concluded that Basmajian's right to repayment had been conclusively resolved at the April 20, 2010 hearing and it could not reopen the issue. It explained: "Judge Steele ordered . . . that the \$18,000 would be paid without interest and even that \$18,000 would only be paid if the second account by Mr. Richard Basmajian is filed and approved by the court. Absent any evidence by Mr. Basmajian that the second account was filed and approved by the court, there's a prior order that says he doesn't get that money. I don't really have to make a whole lot of decisions here. It's already been decided." The court thus said it would order that Basmajian "doesn't get it [the \$18,000] . . . unless and until that condition precedent is met. . . . So as to the \$18,000, I'm ruling now that because of the later order by Judge Steele, Mr. Basmajian is not entitled to the \$18,054 unless and until his second account is approved." It therefore sustained Adelman's objection to the \$44,970 disbursement to Basmajian

and ordered that amount charged against Basmajian's final distribution.

Basmajian contends on appeal that the October 27, 2000 order to distribute \$18,054 to him constituted a final judgment on the merits, which was conclusive pursuant to Code of Civil Procedure section 1908, and that he was entitled to interest on that sum as a matter of law. He therefore urges this court to reverse the probate court's order that the \$44,970 be charged against his final distribution.

The essence of Basmajian's claim is that the probate court's April 2010 order was erroneous because it did not give preclusive effect to the court's prior determination that Basmajian was entitled to be reimbursed for his \$18,054 advance to the trust. But as we have said, "[e]ach order and decree of a superior court exercising its probate function and acting within its jurisdiction is conclusive against collateral attack unless it is void on its face." (*Estate of Hart* (1962) 204 Cal.App.2d 631, 632.) Thus, an erroneous probate decree "must be attacked by appeal and not collaterally. [Citations.] If not corrected by appeal an "erroneous decree . . . is as conclusive as a decree that contains no error." " (*Meyer, supra*, 162 Cal.App.4th at p. 992.)

Pursuant to these principles, if the probate court erred in 2010 by failing to give preclusive effect to its earlier order, Basmajian could have addressed that error by an appeal to this court. He did not do so. Accordingly, the probate court's interpretation of its earlier order became final and is not now subject to collateral attack in this proceeding.

D. Section 16341 Issue

In his objections to the current account, Basmajian asserted that the trustee was required to determine, pursuant to

section 16341,⁵ “the appropriate division of trust net income/profit between the two residuary beneficiaries before a final account is approved and a final distribution is made.” Basmajian further asserted that Adelman had received more in distributions than he had, and thus a “final distribution cannot . . . be made until there has been a determination of non pro rata distributions of principal and income and corresponding adjustments made to each residuary beneficiary’s respective ‘income account’ and ‘principal asset account’ pursuant to [Probate Code] § 16341.”

At the July 12, 2017 hearing, Basmajian urged that before a final distribution could be made, the trustee was required to “see what distributions the beneficiaries have received, add those up, and then apply Probate Code 16341 to ensure that there’s been a fair distribution of income along the way.” The court responded that it believed the current account “include[s] all that.” Basmajian responded that there were two categories of payments from the trust for which the trustee had not accounted: the apartment manager’s direct distributions to Basmajian and Adelman, and distributions Basmajian made during his tenure as trustee. According to Basmajian, section 16341 required the trustee to include those distributions in the final account before a final distribution could be made.

⁵ Section 16341, subdivision (a) provides that after a decedent’s death, each beneficiary of a trust “is entitled to receive a portion of the net income equal to the beneficiary’s fractional interest in undistributed principal assets.”

Adelmann's attorney responded that the two categories of distributions were not properly before the court. As to the first category, trustee Rechtman had noted the direct payment from the apartment manager in her second and final account, and thus those payments "were, in fact, accounted for in the sense that there's a waiver by my client as well as Mr. Basmajian that these payments were made outside of the accounting, but that both sides consented to it and knew. And I have to believe, respectfully, that if Mr. Basmajian believed that there was an inequity somehow in the net monthly proceeds from the rental of the Hesby Street property, he would have raised it. . . . So with regard to the first category, it's contradicted in the record." As to the second category, Adelmann's counsel said none of Basmajian's accounts had ever been approved, and thus the first approved accounting was Rechtman's, which stated that all the income was accounted for and equalized.

The court overruled Basmajian's section 16341 objection, concluding that it "seeks to reopen issues that happened over the last 20 years despite ongoing litigation, orders that are final, appeals that are final."

On appeal, Basmajian repeats his general assertion that the trustee failed to carry out her "mandatory duty pursuant to Probate Code § 16340 – § 16341, to determine each beneficiary's portion of the trust's net income/profits equal to the beneficiary's fractional interest in undistributed principal assets." He fails to explain, however, what precisely he believes the trustee failed to do or to point to the portions of the record he believes illustrate the trustee's alleged error.

To the extent Basmajian is referring to the two alleged omissions he raised in the probate court, these issues were

resolved in earlier proceedings and are not now properly before us. (See *Welch supra*, 152 Cal.App.2d 225; *Lazzarone, supra*, 181 Cal.App.3d 581.) Alternatively, if Basmajian is referring to a different issue, he has failed to articulate it, and thus had not satisfied his appellate burden to affirmatively show error. (*Target Corp. v. Golden State Ins. Co. Ltd.* (2019) 41 Cal.App.5th 13, 19; *In re Marriage of Martindale & Ochoa* (2018) 30 Cal.App.5th 54, 59.) The probate court therefore did not abuse its discretion by rejecting Basmajian’s section 16341 claim.

III.

Basmajian Forfeited His Remaining Appellate Contentions by Failing to Properly Raise Them Below

A. Legal Principles

“‘It is axiomatic that arguments not raised in the trial court are forfeited on appeal.’ (*Kern County Dept. of Child Support Services v. Camacho* (2012) 209 Cal.App.4th 1028, 1038.)’ ” (*Delta Stewardship Council Cases* (2020) 48 Cal.App.5th 1014, 1074.) As one court has explained: “‘“As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried. This rule is based on fairness—it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal. . . .” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2015) ¶ 8:229; p. 8-167.) . . . “‘Appellate courts are loath to reverse a judgment on grounds that the opposing party did not have an opportunity to argue and the trial court did not have an opportunity to consider. . . . Bait and switch on appeal not only subjects the parties to avoidable expense, but also wreaks havoc on a judicial system too burdened to retry cases on

theories that could have been raised earlier.’ ” (*Brandwein v. Butler* (2013) 218 Cal.App.4th 1485, 1519.)’ (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997.)” (*Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 717–718.)

B. Valuation of the Hesby Property

1. Background

As we described in our most recent opinion, trustee Rechtman filed a petition to sell the Hesby property in September 2009. On December 8, 2009, the court entered a stipulated order that directed the trustee to obtain an appraisal of the Hesby property and then allow the siblings to submit competing bids to purchase it. The siblings agreed that the person who submitted the highest bid would be allowed to buy the property, but that the “*appraised value will be utilized to set the value for said property for purposes of dividing the estate.*” (Italics added.)

The Hesby property was appraised to have a value of \$1.3 million. Both Adelmann and Basmajian sought to purchase the property, and the court held an auction on February 16, 2010. Adelmann made the highest bid, and the court awarded her the right to purchase the property for \$1,510,000.

Prior to the sale of the property, Rechtman submitted her first account that valued the Hesby property at \$1. The court approved that account on September 11, 2009. After the property was sold, Rechtman submitted a second account and petition that stated as follows: “During the previous accounting period, [the trustee] valued the [Hesby property] at \$1. Obviously, that valuation was just a placeholder and did not reflect the actual value of the property. Since the First Accounting’s approval, [the trustee] obtained an appraisal for the Hesby Street property for

the purpose of establishing a value toward the beneficiaries' purchase under the terms of the December 9, 2009 Court Order. The appraiser valued the property at \$1,300,000, and consequently the Hesby Street property is reflected as having that value instead of the \$1 value in this accounting." The court approved the account and petition on May 6, 2011.

In August 2011, successor trustee Rubin submitted her first account that noted, among other things, that on July 20, 2010, the Hesby property had been distributed to Adelman "for a cash payment to the trust to equalize distribution in the amount of \$755,000.00. The total value of said property for purposes of the distribution was \$1,510,000.00." The court approved the petition and account on December 23, 2011.

2. Present Proceeding

Rubin submitted the current account in February 2016, which again noted that the one-half interest of the Hesby property distributed to Adelman had a value of \$755,000. Adelman filed an objection, asserting that pursuant to the court's December 8, 2009 order, the value to be attributed to the distribution to her of the Hesby property was half the *appraised value* (\$650,000), not half the sale price (\$755,000).

The proper valuation of the Hesby property was argued extensively at the July 12, 2017 hearing. Adelman's counsel noted that the December 2009 stipulated order specifically provided that the "appraised value will be utilized to set the value of said property for purposes of dividing the estate," and Basmajian's offer to purchase the property agreed that "the appraised value will be utilized to set the value for said property for purposes of dividing the estate." Accordingly, counsel urged, for purposes of valuing the transfer of the Hesby property to

Adelmann, \$650,000 “was the benchmark . . . because . . . that’s what they agreed to. That’s what it says in the documents.”

Basmajian disagreed, arguing that the transfer of a one-half interest in the property to Adelmann under the terms of the trust should be valued at \$755,000, not \$650,000. He did not make this argument with reference to Rubin’s first account, however. Instead, his argument was based entirely on what he urged was the proper interpretation of the stipulated December 2009 order. Basmajian urges that when the December 8, 2009 order was “read in context,” there “was a qualifying price, 1.3 [million]. Then you could overbid that price. And that’s what you had to pay into escrow, which means that that should be the price used to divide up that asset. I mean, to look at it any other way to me is nonsensical.”

After hearing further argument, the court concluded that Basmajian’s interpretation was not “a reasonable interpretation of the orders, the stipulations.” It therefore ordered that the value of the transfer to Adelmann of a one-half interest in the Hesby property “should be \$650,000, not \$755[,000].”

On appeal, Basmajian does not contend, as he did below, that the probate court erred in interpreting the December 2009 order. Instead, his sole argument is that the court’s 2011 order approving Rubin’s first accounting “was a final order . . . determining that the value of the [Hesby property] for the purposes of distributing the estate would be \$1,510,000, and that such order was *res judicata*.” Thus, he says, the valuation “was ‘passed upon’ by the court in 2011, and cannot be undone by a new judge four years later.”

Although Basmajian raised the valuation issue in the probate court, he did not address the *res judicata* argument he

now makes on appeal, and thus the probate court did not have the opportunity to consider it. As we have said, theories not raised in the trial court generally “ ‘ “cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried.” ’ ” (*Sacramentans for Fair Planning v. City of Sacramento*, *supra*, 37 Cal.App.5th at pp. 717–718.) We thus decline to consider the argument for the first time on appeal.

C. Distribution of \$16,875 to Adelman

On February 2, 2009, the trustee made a court-ordered distribution of \$16,875 to Adelman. Trustee Rechtman noted the distribution in her first account, which the probate court approved on September 11, 2009.

Trustee Rubin did not include the \$16,875 distribution in the current account, and Basmajian objected to the omission in a supplemental objection filed August 25, 2017. The trustee filed a response, explaining that the omission was intentional. She said: “There was, in fact, a court-ordered distribution to Adelman in the amount of \$16,875.00 reflected on Rechtman’s First Account Current. [Trustee] was informed that said court-ordered distribution was for income due to Adelman for the year 1998 which had been withheld from distribution by Basmajian during his tenure as Trustee and therefore should not be considered in the equalizing calculations.”

Basmajian did not raise the \$16,875 distribution at the July 12, 2017 hearing. At the conclusion of the hearing, the court said it believed it had addressed all the pending issues and asked the parties whether it had missed any. Basmajian asked to take a few minutes to check his notes, and after doing so he did not

raise any additional issues. The court thus did not expressly rule on the \$16,875 distribution.

Rubin filed a post-hearing supplement to her third account that did not include the \$16,875 distribution. The court held a final hearing on January 29, 2018. Basmajian urged the court that there were still pending issues, but although he specified some of his concerns, he did not raise the \$16,875 distribution. The court ruled that “there has been a trial [and] the accounting has been resolved.” It therefore approved Rubin’s amended account.

On appeal, Basmajian contends the probate court erred by failing to require the trustee to include the \$16,875 distribution to Adelman in the current account. We conclude that Basmajian forfeited the issue by failing to obtain a ruling on it by the probate court. Our Supreme Court has explained that “ ‘ “[W]here the court, through inadvertence or neglect, neither rules nor reserves its ruling . . . the party who objected must make some effort to have the court *actually rule*. If the point is not pressed and is forgotten, [the party] may be deemed to have waived or abandoned it, just as if he had failed to make the objection in the first place.” ’ ” (*People v. Braxton* (2004) 34 Cal.4th 798, 813.) This is so, the court has explained, because the party’s failure to press for a ruling “ ‘deprives the trial court of the opportunity to correct potential error in the first instance.’ ” (*People v. Valdez* (2012) 55 Cal.4th 82, 121; see also *People v. Cunningham* (2001) 25 Cal.4th 926, 984 [“Even if defendant did not so intend, his failure to press for a ruling waives the issue on appeal.”].)

In the present case, although Basmajian included the issue of the \$16,875 distribution to Adelman in his written objections,

he failed to raise it or to obtain a ruling on it at either the July 12, 2017 or January 29, 2018 hearing. His failure to obtain a ruling forfeits the issue on appeal.

DISPOSITION

The order approving trustee Maya Rubin's third and final account is affirmed. Adelman is awarded her appellate costs.

**NOT TO BE PUBLISHED IN THE OFFICIAL
REPORTS**

EDMON, P. J.

We concur:

LAVIN, J.

EGERTON, J.